IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

M/s. Punjab Travelers Corporation & another.
vs.
M/s. Hotel Sangam.

S.B.CIVIL SECOND APPEAL NO.24/2007 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 11.9.2006 PASSED BY SHRI RAMCHANDRA SINGH JHALA, ADDITIONAL DISTRICT JUDGE NO.3, UDAIPUR IN CIVIL APPEAL DECREE NO.54/2003.

DATE OF JUDGMENT ::: 18.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.MR Singhvi, for the appellants.
Mr.S Srimali a/w Mr.R Choudhary, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The trial court dismissed the suit of the plaintiff only on the ground of some defect in

pleadings otherwise so far as question of fact is concerned, it is fact that the defendant who got the benefit under Section 13(6) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950') in earlier filed suit failed to pay rent for continuous six months and thereby committed second default in payment of rent and that fact cannot be disputed. The trial court was of the view that the language as used in Sub-clause (a) of Sub-Section (1) of Section 13 of the Act of 1950 has not been used as such in the plaint and, therefore, the plaintiff's suit is liable to be dismissed.

The judgment and decree of the trial court dated 22.2.2003 was challenged by the landlord by preferring regular first appeal which was allowed by the first appellate court vide judgment and decree dated 11.9.2006.

Hence, this second appeal.

Learned counsel for the appellants submitted that the trial court gave cogent reason and language of Sub-clause (a) of Sub-Section (1) of Section 13 of the Act of 1950 is very clear. When basic foundation of the suit was missing, then the trial court was right in dismissing the suit of the plaintiff.

I considered the submissions of learned counsel

for the appellants and perused the two judgments of the courts below.

Basically, the defect in pleading, which if curable, then, if the defendant has not taken the defence on the basis of lack of pleading and improper pleading, the defendant subsequently cannot say that the suit of the plaintiff be dismissed merely on the basis of defect which continues because of not taking defence by the defendant in time which would have given opportunity to the plaintiff to cure the defect.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellants submitted that the premises in question is a commercial premises and the appellants have well established business in the suit premises and have to make arrangements for getting another accommodation, therefore, he prayed that some reasonable time may be given to the appellants to vacate the suit premises.

Learned counsel for the respondent has serious objection to the grant of time to the appellants.

I considered this prayer of learned counsel for the appellant and looking to the facts of the case, this Court is of the view that the appellants be granted time upto 31.12.2008 to vacate the suit premises.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of two months from today that they shall hand over the vacant possession to the landlord by or before 31.12.2008 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 31.12.2008 in advance within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2009.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya